

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARKY'S MARTIAL ARTS, INC., d/b/a
KILLEARN LAKES TAEKWONDO,

Plaintiff,

-against-

FC ONLINE MARKETING, INC., d/b/a
FCOM,

Defendant.

19cv03363 (ALC) (DF)

ORDER

DEBRA FREEMAN, United States Magistrate Judge:

After this matter was referred to this Court for a damages inquest (Dkt. 20), this Court, on February 28, 2020, issued a Scheduling Order (Dkt. 21), requiring Plaintiff to submit Proposed Findings of Fact and Conclusions of Law by March 30, 2020, and instructing Plaintiff that those Proposed Findings “should specifically tie the proposed damages figure(s) to the legal claim(s) on which liability has now been established; should demonstrate how Plaintiff has arrived at the proposed damages figure(s); and should be supported by a sworn affidavit, or a declaration under penalty of perjury, that attaches as exhibits and contains an explanation of any documentary evidence that helps establish the proposed damages” (*id.* ¶ 2).

On March 30, 2020, Plaintiff filed a so-called “Notice Re: Compliance With Order Dated” [sic] (Dkt. 23), which states the following: “Pursuant to this Court’s February 28, 2020 Order, Plaintiff is submitting a Proposed Order for default judgment along with affidavits and exhibits to prove Plaintiff’s damages” (*see id.*). With that Notice, however, Plaintiff submitted only a single Declaration (*see* Declaration of Blaine Marky in Support of Motion for Default

Judgment, dated Oct. 29, 2019 (Dkt. 22)),¹ and, although that Declaration (which is from one of Plaintiff's principals) does include proposed damages amounts and explains the methodology of certain damages calculations, Plaintiff attached no exhibits or referenced any documentary evidence whatsoever to support any of the figures provided. In addition, the Declaration vaguely refers to additional damages that were purportedly being set forth in "companion briefing" (*see id.* ¶ 17) and in "companion Motions" (*see id.* ¶ 20), but no "companion" papers were submitted. Plaintiff also failed to file proof that it had served its submissions on Defendant. (*See generally* Dkt.)

On September 18, 2020, my Chambers reached out to Plaintiff's counsel to inquire about the seemingly missing submissions and the need for Plaintiff to file proof of service. Although counsel has twice informed Chambers that Plaintiff would be supplementing its filings, it has not done so to date.

Accordingly, it is hereby ORDERED as follows:

1. No later than October 23, 2020, Plaintiff shall supplement its inquest submissions with the documentation and other information required by the Court's February 28, 2020 Order, and shall also file proof that it has served Defendant with copies of (1) the Court's February 28, 2020 Order; (2) Plaintiff's initial filings in response to that Order; (3) this Order; and (4) Plaintiff's supplemental submission in response to this Order. Plaintiff is cautioned that, if it fails to supplement its submissions as required by this Order, and thereby fails to provide adequate support for its requested damages, then this Court may recommend that Plaintiff not be awarded some or all of the damages it is seeking based on Defendant's default.

¹ Although titled a "Declaration" and stated to have been made under penalty of perjury, this document could also be characterized as an affidavit, as it was additionally sworn before a notary public. (*See id.*)

2. If Defendant wishes to respond to Plaintiff's submissions, it should do so, through counsel (*see* Dkt. 21 ¶ 4), no later than November 13, 2020. If Defendant fails to submit a timely response, then this Court will issue a Report and Recommendation regarding damages based on Plaintiff's submissions alone. This Court will also not hold a hearing on damages unless Defendant requests a hearing, in writing, by November 13, 2020.

Dated: New York, New York
October 9, 2020

SO ORDERED



DEBRA FREEMAN
United States District Judge

Copy to:

Plaintiff's counsel (via ECF)